IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4279 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AAREF MOHMMEDBHAI BILKHIYA

Versus

DISTRICT MAGISTRATE 3RD SPECIAL LAND ACQUISITION

Appearance:

MR ANIL S DAVE for Petitioner

MR SJ DAVE, AGP for Respondent No. 1

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/06/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 12-1-2000 passed by the District Magistrate, Bhavnagar.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation to the detaining authority on 17-4-2000 which authority has sent the same to State Govt. on 24-4-2000. Learned APP for the State, Mr.S.J.Dave has stated after verifying the file that representation has been received by the State authority on 27-4-2000 and it has been decided on 29-4-2000. As per the law laid down by this Court, this is a delay which has not been explained by the State. Even no affidavit has been filed either by the detaining authority or the State of Gujarat. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no couner-afafidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

Since no affidavit has been filed either by the detaining

authority or the State and also since the delay has not been explained by the State, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

4. The petition is allowed. The impugned order of detention dated 12-1-2000 passed by the District Magistrate, Bhavnagar against the detenu is hereby quashed. The detenu-Aaref Mohmmedbhai bilkhiya is setis set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

radhan/